

Tennessee Board of Pharmacy
July 22 – 23, 2003

**TENNESSEE BOARD OF PHARMACY
JULY 22 - 23, 2003
ROOM 160 – DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE**

BOARD MEMBERS PRESENT:

Forrest Parmley, President
Robert Shutt, Vice President
Barbara McAndrew, Public Member
Reggie Dilliard, Member
Julie Frazier, Member
Sheila Mitchell, Member
Alan Corley, Member

STAFF PRESENT:

Kendall Lynch, Director
Alison Zane, Legal Counsel
Martha Agee, Board Administrator
John Beauregard, Pharmacist Investigator
Terrence Canada, Pharmacist Investigator
Harry Fuqua, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, July 22, 2003, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CDT by Dr. Forrest Parmley, President.

Dr. Kendall Lynch noted Dr. Barbara McAndrew received an honorary title at the Tennessee Pharmacist Association's Convention in Kingsport, Tennessee during July 15- 18, 2003.

Congratulations to Dr. Alan Corley who received the Bowl of Hygeia Award.

Dr. Forrest Parmley congratulated Dr. Kendall Lynch for being recognized as with the TPA Pharmacist of the Year Award.

Dr. Kendall Lynch introduced five (5) pharmacy students, who are participating in the Multidisciplinary Program.

APPROVAL OF THE MINUTES

Dr. Forrest Parmley requested the minutes to be addressed in the afternoon.

The **minutes of the May 14– 15, 2003** board meeting were presented and reviewed by the Board. Dr. Julie Frazier noted Dr. Forrest Parmley left the Board meeting on Thursday,

May 15, 2003; and Dr. Alan Corley mentioned on page 3, under Billy Ray Collins, DPH, a Consent Order **for Revocation** was presented. Dr. Alan Corley motioned to **approve** the Minutes, with the corrections noted; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

CONSENT ORDERS

KEVIN E. BEIGHTOL, DPH
404 Reigh Court
Franklin, TN 37069

Ms. Alison Zane, legal counsel, presented a Consent Order whereas Dr. Kevin Beightol was disciplined in another state for chemical dependency. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Alan Corley. All were in favor and the motion carried.

KEVIN HARTMAN, DPH
5324 Fredricksburg Way W.
Brentwood, TN 37027

A Consent Order for Reinstatement of License for Dr. Kevin Hartman was presented by Ms. Alison Zane, legal counsel. Dr. Robert Shutt motioned to **accept** the Consent Order; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

RANDALL W. JEAN, DPH
1450 Johnson Road
Lewisburg, TN 37091

A Consent Order for surrender of license due to chemical dependency and a Consent Order for Reinstatement of License for Dr. Randall Jean was presented by legal counsel, Ms. Alison Zane. Dr. Alan Corley motioned to **accept** the Consent Orders; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

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MICHAEL PISTELLO, DPH
200 Farris Lane
LaFollette, TN 37766

Legal counsel, Ms. Alison Zane, presented a Consent Order for Revocation of License for Dr. Michael Pistello. Dr. Pistello had both federal and state charges. The plea agreement from the state attorney states Dr. Pistello consents not to reapply for a license in the future. Dr. Alan Corley motioned to **accept** both orders; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

RICHARD ROBINSON, DPH
215 Sugarwood Drive
Kingsport, TN 37663

Ms. Alison Zane, legal counsel, presented a Consent Order whereas Dr. Richard Robinson was convicted of five (5) counts of unlawful dispensing of controlled substances. Dr. Robinson was placed on a four (4) year probation term and during the probation, he shall not be employed as a pharmacist. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

APRIL SIMMONS, DPH
1425 Water Tower Road
Cedar Grove, TN 38321

A Consent Order for Reinstatement of License for Dr. April Simmons was presented by legal counsel, Ms. Alison Zane. Dr. Robert Shutt motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

TERRI L. TAYLOR-RAWLS, DPH
1021 Ainsworth Circle
Antioch, TN 37013

Legal counsel, Ms. Alison Zane presented a Consent Order whereas Dr. Terri Taylor-Rawls misfilled a prescription for Adderall XR 10 mg. with Glucotrol XL 10 mg. The patient

consumed the incorrect medication and was admitted to the hospital on an overnight basis for low blood sugar. Dr. Taylor-Rawls was assessed a civil penalty of \$250. Dr. Robert Shutt motioned to **accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

TERMS AND CONDITIONS FOR REINSTATEMENT OF LICENSE

1. Respondent does hereby agree to the reinstatement of license number _____ with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years, from _____ to _____.

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, _____, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed

under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;

- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the

Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

- (i) If the license has been inactive, delinquent, suspended or revoked:

(i) Less than one (1) year, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

(ii) One (1) year to not more than five (5) consecutive years, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education;
- III. Successfully complete the jurisprudence examination;
- IV. Pay all cumulative license renewal fees and any applicable penalties;
- V. Complete a period of pharmacy internship in Tennessee.
 - A. From one (1) year to not more than three (3) consecutive years, one hundred sixty (160) hours within ninety (90) consecutive days;
 - B. For more than three (3) consecutive years but not more

than five (5) consecutive years, three hundred twenty

(320) hours within one hundred eighty (180) consecutive days.

iii. **More than five (5) consecutive years, the pharmacist shall:**

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education;
- III. Successfully complete the NAPLEX and jurisprudence examinations;
- IV. Pay all cumulative license renewal fees and any applicable penalties;
- V. Complete a period of pharmacy internship of three hundred (320) hours within one hundred eighty (180) consecutive days.

Dr. Alan Corley motioned to **approve** the impaired policy; seconded by Dr. Reggie Dilliard.

All were in favor and the motion carried.

WAIVERS

KAREN KIRSCHBAUM, DPH

Rashid Hospital
Middle East

Dr. Karen Kirschbaum is requesting a waiver of Rule 1140-5-.01 relevant to the fifteen (15) hours of ACPE Live continuing education hours. Dr. Kirschbaum is currently practicing in the Middle East and due to the political upheaval in the area is unable to obtain an educational leave to return to the United States. Dr. Alan Corley motioned to **grant the wavier request for this license renewal timeframe only**. Dr. Sheila Mitchell seconded the motion. All were in favor and the motion carried.

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MOLLY J. D. LEFEVER, DPH
2117 Alta Vista Drive
Waukegan, IL 60087

Dr. Molly LeFever is requesting a waiver of Rule 1140-1-.07 (3) (c) (3) relevant to the successful completion of the NAPLEX for reinstatement of her pharmacist license. Dr. LeFever's license expired in August, 1997. Dr. LeFever has maintained an active license in Illinois since 1994. Dr. Julie Frazier motioned to **grant** the waiver; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

JAMES J. MAYO, DPH
2330 Elmgate
Houston, TX 77080

Dr. James Mayo is requesting a waiver of Rule 1140-1-.07 (3) (c) (3) referencing the NAPLEX exam. Dr. Mayo's license had been inactive since December, 1993. During the implementation of the July, 1998 rule change, Dr. Mayo declined to elect any of the options provided to reinstate his license to an active status, document dated January 15, 1999. The August 31, 2000 renewal notice furnished by Dr. Mayo stated he wished to retire his license. Dr. Mayo has an active license in Texas. Dr. Reggie Dilliard motioned to **deny the request at this time and to advise Dr. Mayo that he may appear before the board should he wish to appeal their decision.** Mrs. Barbara McAndrew seconded the motion. All were in favor and the motion carried.

DILESH PATEL, DPH
1601 Highway 72 East
Corinth, MS 38834

Dr. Dilesh Patel is requesting a waiver of Rule 1140-5-.01 relevant to the fifteen (15) ACPE LIVE continuing education hours. Dr. Patel was diagnosed with Hodgkin's disease in November, 2002. Dr. Patel's license will expire on July 31, 2003. The Board noted that a

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seminar entitled, 2003 Fall Therapeutics, will be presented in Memphis, Tennessee, on October 16 – 17, 2003, awarding fifteen (15) hours of ACPE Live continuing education. Dr. Robert Shutt motioned to **grant a six (6) month extension to obtain the Live CE's**. Dr. Sheila Mitchell **added a friendly amendment to send Dr. Patel a brochure regarding the seminar** and Dr. Reggie Dilliard's **friendly amendment to the motion is to state for this license renewal only**. Dr. Alan Corley seconded the motion as amended. All were in favor and the motion carried.

ELECTRONICALLY GENERATED SIGNATURE STATEMENT

Dr. Kendall Lynch stated that per Rule 1140-3-.04, the term “electronic” appears to apply to computer to computer. The rules do not define the word “signature”. The following policy statement was accepted by the Board.

Prescriptions with electronically-generated signatures on them are acceptable; this means that the prescription has a prescriber's signature on it that has been generated by a computer. These prescriptions can be transmitted directly from the prescriber's computer to the pharmacist's computer, or directly from the prescriber's computer to the pharmacist's facsimile machine or a printed prescription generated by the prescriber's computer and handed to the patient. However, these prescriptions must have a prescriber's signature on it, whether it is a signature in ink or an electronically generated signature.

Dr. Alan Corley motioned to **accept** the Electronically Generated Signature Statement; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

DISTRICT III MEETING SAVANNAH, GEORGIA AUGUST 3 – 5, 2003

Director Kendall Lynch stated out of-state travel has been applied for Dr. Julie Frazer and Dr. Sheila Mitchell to attend the District III Meeting.

**NATIONAL ASSOCIATION OF BOARDS OF PHARMACY'S
2003 FALL LEGISLATIVE CONFERENCE
SEPTEMBER 14 – 16, 2003
WASHINGTON, DC**

Director Kendall Lynch noted he would be attending the 2003 Fall Legislative Conference and an Ace Committee Meeting in Washington, D.C.

AD HOC RULES

1. Rule 1140-1-.01 - Centralized Prescription Processing
2. Rule 1140-1-.04 – Pharmacy Internship

To delete the 1,500 hours of pharmacy internship due to the Pharm D. program.

(d) additional practical experience ...

Dr. Frazier opposed.

3. Rule 1140-1-.05 – Licensing Examinations

MPJE – OK (Passing score is subject to change)

4. Rule 1140-1-.10 (15) – Fees

Researchers - \$60 biennially
Affiliates - \$30 biennially

5. Rule 1140-1-.14 (4) – Prescription Drugs Dispensed by Health Departments

To add Medroxyprogesterone Acetate Injectable (Depo Provera®)

6. Rule 1140-2-.02 – Pharmacy Technicians

(3) (a) delete
(3) (i) delete
(3) (l) delete
(3) (o) delete

(4) “may” receive medical orders and transfer; “may” check other techs.

(5) incorporate w/ #4

(6) renumbered to (5)

Increase the ratio to a maximum 4:1 if at least two (2) of the pharmacy technicians are certified pharmacy technicians.

(7) renumbered to (6)

(8) renumbered to (7)

(9) renumbered to (8)

(10) renumbered to (9)

Rule 1140 -2-.01 (13) (b) Page 135

Performance of the final verification of the process prior to dispensing of the product or process.

Pilot project approved by the Board. Refer to the Ad Hoc Rules Committee.

7. Rule 1140-3-.03 (10) Medical and prescription orders... Oral medical and prescription orders shall be **initialed** by the authorized individual accepting the order.

8. Rule 1140-3-.13 Centralized Prescription Processing

Receive information from model rules and other states. Requires both pharmacies to be licensed.

(b) The pharmacies performing or contracting for centralized prescriptions processing services shall maintain a policy and procedure manual. The pharmacies shall provide the Board with a copy of the manual upon request from the Board.

9. Establish a new Chapter #1140-3-.16 for Central Fill.

10. Rule 1140-3-.15 Reference Books

Amended language is OK.

11. Rule 1140-5-.01 Continuing Education

(1) Every person..... The Board shall accept the required fifteen (15) contact hours if the ACPE **approved provider** designates them as live hours, thegrants the applicant **prior** approval. Delete the word “prior”

12. Rule 1140-6-.03 Nuclear Pharmacy Practice Sites – Library

Amendments to the language is OK.

13. Rule 1140-9 Manufacturers and Wholesalers

Amendments withdrawn.

**RICK MATTHEWS, DPH – DISCIPLINED IN ANOTHER STATE
KENTUCKY**

Dr. Rick Matthews appeared before the Board along with advocate, Dr. Tommy Malone with the Tennessee Medical Foundation. Director Kendall Lynch advised the members that Dr. Rick Matthews has made application to the Tennessee State Board for reciprocity and has completed all the requirements. Dr. Matthews was disciplined in Kentucky in 2001 and went through a treatment program from December 2001 – March 2002. Dr. Matthews is on probation with the Kentucky Board of Pharmacy for five (5) years from December, 2002 – December, 2007. Dr. Matthews stated he was arrested and charged with DUI, second offense and trafficking in controlled substances, first offense in December, 2001. Dr. Matthews was placed on Pretrial Diversion with the Court of Justice, Commonwealth of Kentucky. On June 16, 2003 the courts adjudicated the charges. The criminal probation will end in June, 2008. Dr. Tommy Malone stated Dr. Matthews was compliant with the recommendations required from TMF. After board discussion, Dr. Reggie Dilliard motioned to **grant the request for reciprocity** for Rick Matthews with the following probationary conditions:

1. Said probation shall remain in effect for a period of five (5) years,
from July 22, 2003 to June, 2008.
 - (a) The Respondent shall completely abstain from the consumption of
alcohol or any other drugs, except as specified in (b).
 - (b) The Respondent shall be able to consume legend drugs or controlled

substances prescribed by the Respondent's primary physician,
Steve Johnson, MD, except in the case of an emergency or upon a
proper referral from the Respondent's primary physician. The Respondent
shall immediately notify the Board office in writing of the name of the
Respondent's primary physician each time the Respondent changes
primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in
the Respondent's name for any legend drugs, controlled substances or
devices containing same from a physician other than the Respondent's
primary physician or from any other health care provider, such as a nurse
practitioner, physician's assistant or psychiatrist
- (d) The Respondent shall destroy any unused controlled substances prescribed
under the provisions of subsection (b) no later than thirty (30) days
following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion
of any and all legend drugs or controlled substances (a copy of the
prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily
tissues for the presence of drugs and alcohol, at the Respondent's own
expense, by agents of the Board, such as the Tennessee Pharmacists
Recovery Network for as long as the Respondent has an active license.
In the event that the sampling indicates the presence of drugs for which
the Respondent does not have a valid prescription or the sampling

indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Kentucky Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

**TIM SIMEK, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
MARYVILLE, TN**

Dr. Tim Simek appeared before the Board to request the reinstatement of his pharmacist license along with advocate, Dr. Edwin Bills with the Tennessee Pharmacist Recovery Network. Director Kendall Lynch advised the members that in February, 2003, Dr. Simek

contacted him and stated he was in Cornerstone for chemical dependency and wanted to surrender his license. The Board accepted the Consent Order at the March 18 – 19, 2003 meeting. Dr. Simek stated he had previous problems with alcohol. In 1992, Dr. Simek had back surgery and was treated with opiates. In 1999, Dr. Simek had surgery and was prescribed Lortab. In early 2002, Dr. Simek checked into a 28-day treatment facility for a detox program. After developing bronchitis three months later, Dr. Simek self-administered the cough with a narcotic cough syrup. Dr. Edwin Bills noted Dr. Simek was compliant with the TPRN requirements. Mr. Eric Amburgey with Cornerstone advised Dr. Lynch by letter dated July 18, 2003, that Dr. Simek was admitted into the program on December 13, 2002 and was discharged on March 21, 2003. Mr. Amburgey was unable to attend the meeting due to prior obligations but stated Cornerstone advocates on Dr. Simek's behalf. After board discussion, Dr. Alan Corley motioned:

1. Respondent does hereby agree to the reinstatement of license number 10781 with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years, from July 22, 2003 to July 22, 2008.

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Jerry Buchanan, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes

primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board,

the Respondent's license may be summarily suspended;

- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) If the license has been inactive, delinquent, suspended or revoked:
 - (i) **Less than one (1) year, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education; and
 - III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

**RAMONA THORNBERRY, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
NASHVILLE, TN**

Dr. Ramona Thornberry appeared before the Board along with advocates Dr. Tommy Malone with the Tennessee Medical Foundation, Drs. Cliff Weiss and Kim Roberts with the Tennessee Pharmacist Recovery Network to request the reinstatement of her pharmacist license. Director

Kendall Lynch stated he received a telephone call in December, 2002, from Middle Tennessee Medical Center regarding a possible impaired pharmacist. Dr. Lynch instructed that individual to contact the Tennessee Pharmacist Recovery Network. In January, 2003, Dr. Mike Matheny contacted Dr. Lynch and stated Dr. Thornberry agreed to go to Cresthaven. The Board office received Dr. Thornberry's license in the mail with a note stating, surrendered as per your request. Dr. Thornberry stated she starting drinking due some medical problems. Dr. Thornberry stated she was discharged on March 13, 2003 and has been attending Caduceus and TPRN meetings. Dr. Kim Roberts stated Dr. Thornberry has completed 90/90 and is compliant with TPRN requirements. After board discussion, Dr. Sheila Mitchell motioned:

1. Respondent does hereby agree to the reinstatement of license number 6680 with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years, from July 22, 2003 to July 22, 2008.

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Darren Arnette, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or

devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;

- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee

Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;

- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

- (i) If the license has been inactive, delinquent, suspended or revoked:

(i) Less than one (1) year, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

ADJOURNMENT

Dr. Forrest Parmley entertained a motion to adjourn the Board of Pharmacy meeting on Tuesday, July 22, 2003 at 4:30 p.m. CDT; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

RECONVENED

The Board of Pharmacy reconvened on Wednesday, July 23, 2002 at 9:00 a.m. CDT in Room 160 of the Davy Crockett Tower. President Forrest Parmley called the meeting to order. All

members were present.

LEGAL REPORT/COMPLAINTS

1. Case No.: L02-PHR-RBS-200210547

The Complainant alleges that she purchased seven (7) Ornade Spansules at the Respondent's pharmacy and that approximately nine (9) months prior to her purchase the FDA withdrew the product. The Complainant further alleges that as a result of consuming the product, she had "mini strokes". An investigation of this matter revealed that the FDA sent letters to drug manufacturers stating that they were withdrawing the product because of a connection between the product and incidents of hemorrhagic strokes. The FDA characterized the product as "not generally recognized as safe and effective for OTC use.", and asked the manufacturer's to voluntarily discontinue marketing or reformulation of the product. The withdrawal of the product did not extend to legend drugs or to the pharmacy level.

*Previous Complaints: DPh: One Previous (shorted Rx, dismissed)
Pharmacy: Now Closed*

Recommendation: Letter of Warning to DPH regarding patient counseling and about the duty to perform a drug regimen review.

Dr. Alan Corley motioned to **dismiss** the complaint; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

2. Case No.: L99-PHR-RBS-199901548

The Respondent was convicted of Simple Possession of a Controlled Substance in 1999 and refilling expired prescriptions without authorization in a contiguous state in 2001. As a result of these convictions, the Respondent surrendered his license to practice pharmacy in Tennessee in 2001.

Recommendation: Close case noting that the Respondent may not renew his license without appearing before the Board.

Dr. Robert Shutt motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

3. Case No.: L01-PHR-RBS-200103880

The complaint alleges that the PIC was leaving the pharmacy for several hours a day leaving only the pharmacy technicians and clerks unsupervised. The complaint also alleges that prescriptions were being filled on several occasions when the PIC was not present. The Respondent denies all of the allegations and the investigator visited the

pharmacy on several occasions and did not observe the alleged violations. The Complainant was anonymous, so there was no way to verify the allegations with the Complainant.

Previous Complaints: PIC: None

Pharmacy: One Previous (ARCOS Report, Dismissed)

Recommendation: Dismiss

Dr. Alan Corley motioned to **dismiss**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

4. Case No.: L02-PHR-RBS-200208216

The complaint alleges that Respondent misfilled a prescription for Amen 10mg with Ambien 10mg. The prescription was a refill. The patient consumed the wrong medication and a few minutes later got into her car, became drowsy and crashed the car. The patient suffered injuries, but the extent of the injuries is unknown. The Respondent admits that she verified the prescription, but she cannot unequivocally state that the prescription was misfilled because she never saw the bottle or spoke to the patient again. The Respondent did not report the misfill to the Board because she had no knowledge of any serious personal injury to the patient. The patient did sue the Respondent and the insurance company settled the case for a lump sum.

Recommendation: Letter of Warning regarding the misfill to the pharmacy

Dr. Alan Corley motioned to **accept counsel's recommendation**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

5. Case No.: L03-PHR-RBS-200312807

The Board Investigator observed one (1) pharmacist supervising four (4) pharmacy technicians, two (2) of whom were certified. The PIC responded that two (2) of the technicians were working to assist the pharmacist on duty and the other two (2) were working as stock clerks to perform an inventory. The pharmacy recently went through a change of ownership and that is why the inventory is being performed.

Recommendation: Letter of Warning to PIC

Dr. Robert Shutt motioned to issue a **Letter of Instruction**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

6. Case No.: L03-PHR-RBS-200313023

The Respondent was an unlicensed storefront facilitating the importation and sale of Canadian drugs. Once the Respondent became aware of the Board's position, the

Respondent closed their business. An investigator visited the Respondent and verified that they were out of business.

Recommendation: Dismiss

Dr. Reggie Dilliard motioned to **dismiss**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

7. Case No.: L03-PHR-RBS-200313043

The Complainant alleges that three (3) misfills occurred. (1). The pharmacist mistakenly filled a prescription for Celebrex 60 tablets with Celexa 38 tablets. The pharmacy only had 38 tablets and their company policy does not allow them to owe the patient the balance; (2). A prescription for Tobradex Ophthalmic Suspension was mistakenly filled with Tobradex Ophthalmic Ointment. The technician entered the information incorrectly and the pharmacist failed to catch the error; and (3). A prescription for Trileptal 60 tablets was mistakenly filled with Trileptal 6 tablets. The patient entered the refill request in the internet site and the previous quantity was dispensed. The pharmacist admits all three (3) misfills. The patient did not consume or apply any of the incorrect medications. Neither the Complainant, nor the pharmacist addressed the issue of patient counseling.

Previous Complaints: DPh: None

Pharmacy: Three previous (11/02, medication dropped on floor, LOI to PIC); (2/98 misfill, Dismissal); (1/97, patient counseling violation, \$700.00 CP).

Recommendation: Consent Order with a civil penalty of \$300.00

Dr. Alan Corley motioned for an **Informal Conference**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

8. Case No.: L03-PHR-RBS-200313796

The Complainant alleges that he was shorted three (3) Methadone tablets and that he received two (2) different tablet sizes. The Respondent stated that the technician checked the prescription three (3) times and the pharmacist checked it once. The Respondent also stated that the Complainant knew that he would be receiving different sized tablets through patient counseling. The Respondent explained to the Complainant that his prescription consisted of Methadone tablets from two (2) different manufacturers which is the reason for the different sizes. An inventory of the pharmacy was also conducted, which did not reveal a shortage.

Recommendation: Dismiss

Dr. Robert Shutt motioned to **dismiss** the complaint; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

9. Case No.: L03-PHR-RBS-200314735

The complaint alleges that the Respondent was disciplined in a contiguous state. The Respondent was fined and was ordered to complete additional continuing education credits. The allegation was that in 2001, there was a loss of hydrocodone and alprazolam in the Respondent's inventory while he was PIC. An investigation of the matter revealed that Respondent completed his additional CE credits and that there are no criminal charges pending.

Recommendation: Dismissal

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

10. Case No.: L03-PHR-RBS-200313308

The Complainant alleges that the pharmacists refused to fill his son's prescriptions for Metadate ER 10 mg. and 20 mg with the generic substitute and that the pharmacists told the Respondent that the generic was not available. Complainant alleges that this failure to substitute caused him to pay a fifteen dollar (\$15.00) co-pay instead of a five dollar (\$5.00) co-pay. The prescriptions state "dispense as written". The pharmacists dispensed the medication according to the physician's directives and did not allow for a generic substitution. Neither of the pharmacists could state with any accuracy if the Complainant was ever told that there was no generic available.

Recommendation: Dismissal

Dr. Reggie Dilliard motioned to **dismiss** the complaint; seconded by Dr. Alan Corley. All were in favor and the motion carried.

11. Case No.: L03-PHR-RBS-200313311

This complaint alleges that errors were made by two (2) different pharmacists. First, the Complainant alleges that the four (4) prescriptions were filled in the wrong person's name. The pharmacist admits the error for three (3) of the prescriptions because the patients had the same name, but a different spelling. The error was caught by the pharmacist before the prescriptions left the pharmacy. The second allegation is that a different pharmacist misfilled a prescription for Zyrtec with Zyprexa. The pharmacist admits the misfill. The error was recognized by the patient's parent before the patient consumed the incorrect medication. The PIC informed the Board that they have activated a computer program that identifies the technician as well as the verifying pharmacist. They are now entering drugs by the NDC number rather than the drug name and the NDC number is initialed by the pharmacist and the technician.

Previous Complaints: DPh (9/96, misfill, letter)

PIC (None)
Pharmacy: 9/93, overpricing, dismissed)

Recommendation: Consent Order with a \$300.00 civil penalty

Dr. Sheila Mitchell motioned to issue a **Letter of Warning** regarding how to remedy the problem. Dr. Alan Corley seconded the motion. All were in favor and the motion carried.

12. Case No.: L03-PHR-RBS-200314006

The Complainant alleges that two (2) different pharmacist acted collusively to deny him his prescribed medication, Vancomycin IV by refusing to fill the prescription. Both pharmacists replied that they did refuse to fill the prescription because it needed to be administered through a home infusion pharmacy. The Complainant wanted to purchase just the medication so that he could mix it at home without an infusion device. The pharmacists refused to fill the prescription because the medication should be mixed in a sterile field.

Previous Complaints :Pharmacy #1: None
PIC: None

Pharmacy #2: (5/96, dispense without Rx, dismissed; 8/00
performing lab tests, dismissed)
PIC: same as above.

Recommendation: Dismissal

Dr. Robert Shutt motioned to **dismiss** the complaint; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

13. Case No.: L03-PHR-RBS-200314078

The Complainant alleges that the patient's prescription for Triamcinolone cream was mistakenly filled with Tazorac cream. The prescription says "TAC" cream. The pharmacist admits the misfill and attributes it to the abbreviation used on the prescription. The pharmacist does not indicate in her response as to whether patient counseling was offered. The pharmacist did state that she has instructed her staff to call the prescribing physician if they do not understand or are unfamiliar with the abbreviations.

Previous Complaints: DPh: None
Pharmacy: (2/2003, shorted Rx, Dismissed)

Recommendation: Letter of Instruction to pharmacist to check with physician if uncertain as to physician's abbreviations.

Dr. Alan Corley motioned to issue a **Letter of Warning** to discuss patient counseling; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

Director Kendall Lynch will send a letter to the physician advising that it is not a good practice habit to use abbreviations per the ISMP.

14. Case No.: L03-PHR-RBS-200314528

The Respondent failed to complete his treatment for chemical dependency. The Respondent contends that this failure occurred because he couldn't afford the treatment. Respondent also indicates that he wants to finish out his treatment at another facility. We sent the Respondent a Consent Order for the surrender of his license at this other facility and it was returned back to my office.

Recommendation: Formal Hearing

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

15. Case No.: L03-PHR-RBS-200314738

The Respondent was disciplined in a contiguous state in 2002 for having discrepancies in his controlled substance inventory while the Respondent was the PIC. The Respondent signed an agreed order to pay a fine of one thousand dollars (\$1,000.00) and to complete additional continuing education hours within one (1) year of the filing of the order. There are no criminal charges pending and the Respondent satisfied the conditions of the order.

Recommendation: Dismissal

Dr. Julie Frazier motioned to **dismiss** the complaint; seconded by Dr. Alan Corley. All were in favor and the motion carried.

16. Case No.: L03-PHR-RBS-200314930

The complaint alleges that Respondent is a storefront that facilitates the sale of Canadian drugs in the State of Tennessee. A cease and desist letter was sent to the Respondent and the Respondent subsequently closed. An investigator confirmed that the Respondent is out of business.

Recommendation: Dismissal

Dr. Robert Shutt motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

17. Case No.: L03-PHR-RBS-200313233

The Respondent surrendered his license to practice pharmacy in a bordering state. The basis for the complaint against the Respondent was that he allegedly submitted false claims for reimbursement from the patient's insurance company. This matter was previously presented to the Board with a recommendation for a Consent Order for the revocation of his license, mirroring the Consent Order from the bordering state. The case was presented a second time at the last meeting because the Respondent's attorney requesting clemency for his client since there was no drug addiction involved in this incident. The Board requested some additional information about the criminal charges pending against the Respondent. The Respondent was indicted and he was charged with three (3) counts of theft by deception over three hundred dollars (\$300.00), in which it is alleged that the Respondent received over \$20,000.00 in compensation for drugs that some of his patients never received.

Recommendation: Formal Hearing

Dr. Alan Corley motioned to **accept counsel's recommendation**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

18. Case No.: L02-PHR-RBS-200209839

The complaint alleges that a patient received a prescription from the Respondent for Cephalexin; the patient injected the drug shortly thereafter went into anaphylactic shock and died. The Board became aware of this incident because the pharmacist reported it to the Board. An investigation of the matter revealed that the patient profile stated that the patient was allergic to cephalosporins. When the prescription was first filled, the pharmacist noticed the warning on the patient profile that the patient was allergic to cephalosporins and counseled the patient's husband about the possible allergy since the husband picked up the prescription. The patient consumed the medication without incident. Approximately one (1) month later, the pharmacist filled another prescription for Cephalexin, but at that time, the pharmacist did not counsel the patient's husband because he already previously provided counseling. This second prescription is the subject of this complaint. There was no way to verify what caused the patient's death, since the patient suffered from other medical conditions that may have caused it.

Recommendation: Dismissal

Dr. Reggie Dilliard motioned to **dismiss** the complaint; seconded by Dr. Alan Corley. All were in favor and the motion carried.

19. Case No.: L03-PHR-RBS-200314126

The complaint alleges that the Respondent has been engaging in the practice of pharmacy without a license. The Respondent is a storefront located in Tennessee that facilitates the illegal importation of Canadian drugs into the State of Tennessee. The Board previously

voted to send the Respondent a Consent Order with a \$1,000.00 civil penalty with language ordering the Respondent to cease and desist the alleged conduct. To date, I have not received a response from the Respondent.

Recommendation: Formal Hearing

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

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Legal counsel, Ms. Alison Zane stated the pharmacist will go to Charter Lakeside for four to six weeks to address depression issues. Respondent is not able to afford the treatment center and wants to see his therapist. Respondent was filling unauthorized prescriptions, and a urine screen resulted positive for Tramadol. Respondent was forging prescriptions for himself. Dr. Robert Shutt requested to see the report from Charter Lakeside.

RECOMMENDATION: If Charter's report does not reveal depression and Respondent has clean urine screens, Respondent may return to work and check with his therapist. Should the report reveal otherwise, issue a Consent Order for surrender of license and if Respondent does not sign the Consent Order proceed with a formal hearing.

Dr. Sheila Mitchell motioned to accept counsel's recommendation, seconded by Dr. Alan Corley. After board discussion, Dr. Mitchell withdrew her motion and Dr. Corley withdrew the second to the motion. Motion did not carry.

Dr. Sheila Mitchell motioned to **stand by the Board's original recommendation**, which states:

Consent Order for suspension of the Respondent's license until such time that the Respondent completes a drug and alcohol evaluation, signs any and all releases or authorizations for the Board of Pharmacy to obtain the results of the evaluation and complies with and completes any and all recommendation emanating from the evaluation. (Authorize formal hearing).

Dr. Alan Corley seconded the motion. All were in favor and the motion carried.

TENNESSEE PHARMACIST ASSOCIATION

The Tennessee Pharmacist Association nominated the following pharmacists for an appointment to the Board of Pharmacy.

Terry Grinder, DPH
A. Larry Hill, DPH
Michael Messamore, DPH
Ronnie Vise, DPH
Barry Walton, DPH

AD HOC RULES COMMITTEE

President Forrest Parmley appointed Dr. Julie Frazier and Dr. Reggie Dilliard to the Ad Hoc Rules Committee.

NATIONAL ASSOCIATION OF BOARDS OF PHARMACY

The National Association of Boards of Pharmacy made the following appointments for the Committees and Task Forces for the 2003 – 2004 year. Dr. Reggie Dilliard is to serve on the Committee on Constitution and By-Laws; Dr. Julie Frazier will serve on the Committee on Law Enforcement and Legislation; and Dr. Sheila Mitchell will serve on the Task Force on Limited Distribution and Shortage of Medications. Congratulations!

ADJOURNMENT

President Forrest Parmley adjourned the Tennessee Board of Pharmacy meeting on Wednesday, July 23, 2003 at 11:25 a.m. CDT.

Respectfully submitted,

Forrest Parmley, President

Kendall M. Lynch, Director

Tennessee Board of Pharmacy
July 22 – 23, 2003